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Asset Forfeiture News

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Out-of-District Seizure Warrants

By Stefan D. Cassella, Assistant Chief, AFMLS, Criminal Division

In 1992, Congress amended 28 U.S.C. § 1355 to permit the Government to file a civil forfeiture action in the district in which the acts giving rise to the forfeiture took place. The statute also provides for nationwide service of "such process as may be required to bring the property subject to forfeiture before the court." Section 1355(d). It is not completely clear whether this authority extends to seizure warrants that may be issued under Fed. R. Crim. P. 41.

In a typical money laundering case, for example, the defendant may have committed acts in one district that resulted in the placement of money or other property subject to forfeiture under 18 U.S.C. § 981(a)(1)(A) in numerous other districts around the country. In such cases, it appears clear from the venue provision in section 1355(b)(1) that the court in the district where the financial transactions originated has venue over all civil forfeitures arising out of those transactions, regardless of where the property may be located. But the court may not be convinced that section 1355(d) gives it the authority to issue seizure warrants for bank accounts and other property located in other districts.

To address this question, we must first take a closer look at the expanded venue provision in section 1355(b)(1) and then determine whether, in light of the purpose that statute was designed to serve, Congress intended the nationwide service of process of provision in section 1355(d) to apply to seizure warrants. I conclude that it did and that such warrants may be issued for forfeitable property wherever it may be located.

Venue

The amendments to section 1355 provide that a civil forfeiture case may be brought in the district "in which any of the acts or omissions giving rise to the forfeiture occurred." 28 U.S.C. § 1355(b)(1). In a money laundering case, the financial transaction is the act giving rise to the forfeiture. Thus, if the money launderers conduct numerous

*See **District**, page 2*

Inside this issue . . .

Out-of-District Seizure Warrants

District, from page 1

financial transactions, all of which originate in a single district, the resulting civil forfeiture case may be filed in that district even though the each transaction resulted in the placement of property in a different district.

Congress had in mind precisely this kind of case when it enacted the expanded venue provision in 1992. Section 1355 was amended as part of a series of anti-money laundering enhancements that were included in the Annunzio-Wylie Anti-Money Laundering Act.[1] The floor manager's summary of the Senate version of the bill stated the following:

> "[Section 1521 of the Act] relates to the jurisdiction and venue in civil forfeiture cases and provides that civil forfeiture actions may be brought in the district where the illegal acts giving rise to forfeiture occurred. *In a money laundering case involving funds on deposit in bank accounts, for example, this would allow a single case to be brought in the district where the money laundering offense occurred even if, as is often the case, the money launderer has placed the laundered property in numerous different banks throughout the United States.* In contrast, current law requires the [G]overnment to file a separate civil action in each of the districts where the property is located."

138 Cong. Rec. S8625 (daily ed. June 23, 1992) (emphasis added). *See United States v. $633,021.67 in U.S. Currency*, 842 F. Supp. 528, 534 (N.D. Ga. 1993) (reviewing the legislative history and concluding that Congress intended "to relieve the [G]overnment of the need to prosecute multiple forfeiture actions from the same case in different districts").

In other words, Congress wanted to give the Government the authority to bring a set of related civil forfeiture claims in the same district, instead of having to file separate complaints in each district where the property happened to be located. Money laundering cases provide the most obvious example of when such consolidation makes sense.

Is the 1992 amendment to section 1355 only an expanded venue statute?

Nationwide Service of Process

A separate question is whether the 1992 amendment to section 1355 is only an expanded venue statute, or whether it also provides the district court with means of acquiring *in rem* jurisdiction over the property subject to forfeiture. To answer that question, we must return to the legislative history.

The 1992 amendment to section 1355 was only the most recent of a series of statutory changes whereby Congress expanded the possible venues for filing a civil forfeiture case. Traditionally, venue for civil forfeiture actions lay in the district where the property was found, 28 U.S.C. § 1395(b), or into which it was brought, 28 U.S.C. § 1395(c). In the 1980s, however, Congress enacted 18 U.S.C. § 981(h) and 21 U.S.C. § 881(j), which provide that, in addition to the places specified in 28 U.S.C. § 1395, venue for a civil forfeiture will lie in the district where the owner of the property is found (if he is prosecuted for the offense giving rise to the forfeiture), or where a criminal prosecution against the owner is brought.

In the years following the enactment of sections 981(h) and 881(j) there was much litigation over whether those statutes were only "expanded venue" statutes, or whether they also authorized the district court in one district to issue "nationwide service of process" in order to obtain *in rem* jurisdiction over the property. The courts were split on this issue. Some held that in the absence of a nationwide service of process provision in the statute, sections 981(h) and 881(j) did not give the district courts *in rem* jurisdiction over property located outside of the district. *See United States v. 51 Pieces of Real Property*, 17 F.3d 1306 (10th Cir. 1994); *United States v. Contents of Accounts Nos. 3034504504 and 144-07143 at Merrill Lynch*, 971 F.2d 974 (3d Cir. 1992). Other courts, however, held that the expanded venue provisions in sections 981(h) and 881(j) necessarily implied the authority for nationwide service of process. *See United States v. Real Property Known as 953 East Sahara*, 807 F. Supp. 581 (D. Ariz. 1992) (collecting cases and holding that

section 981(h) implies nationwide service of process authority); *United States v. All Funds on Deposit*, 767 F. Supp. 36, 40 (E.D.N.Y. 1991).

When it enacted the most recent expanded venue provision in 1992, Congress was careful to avoid the omission that had led to so much litigation under sections 981(h) and 881(j). Indeed, in his discussion of what became section 1355(b), the Senate sponsor of the legislation lamented the absence of any provision in the law giving courts explicit *in rem* jurisdiction over property subject to forfeiture, and stated that the amendments to section 1355 were specifically intended to redress this problem. 137 Cong. Rec. S12238 (daily ed. Aug. 2, 1991 (remarks of Sen. D'Amato); *see United States v. $633,021.67 in U.S. Currency, supra,* 842 F. Supp. at 532. Accordingly, when the bill was in final form, it included not only the venue provision in 28 U.S.C. § 1355(b), but also an explicit nationwide service of process provision in section 1355(d). That statute provides as follows:

> "(d) Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action."

Thus, it is clear that section 1355 provides for both expanded venue and nationwide service of whatever process is necessary to allow the court where venue lies to exercise *in rem* jurisdiction over the subject property. *See United States v. $633,021.67 in U.S. Currency, supra* (section 1355(b) is both a venue statute and an *in rem* jurisdictional statute; the district court has both jurisdiction and venue over property seized in other districts if some of the offenses giving rise to forfeiture occurred in the district); *United States v. 18900 S.W. 50th Street*, 915 F. Supp. 1199 (N.D. Fla. 1994) (same).

Conflict Between Section 1355(d) and Rule 41(a)

Despite its evident intent to remove all statutory obstacles to the Government's ability to consolidate civil forfeiture actions in a single district, Congress failed to recognize a possible conflict between the new nationwide service of process provision in section 1355(d) and the provisions of Rule 41(a) regarding the issuance of a seizure warrant.

The seizure of property in money laundering forfeiture cases is authorized by 18 U.S.C. § 981(b). Section 981(b)(2) provides that the seizure may take place pursuant to "process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims"—*i.e.*, an arrest warrant *in rem* issued under Rule C(3)—or pursuant to a seizure warrant issued "pursuant to the Federal Rules of Criminal Procedure." 18 U.S.C. § 981(b)(2)(B). Seizure warrants in criminal cases, of course, are issued pursuant to Fed. R. Crim. P. 41.

A seizure warrant that is obtained pursuant to section 981(b) is "process" issued by the district court "to bring before the

See District, page 4

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Out-of-District Seizure Warrants

***District**, from page 3*

court the property that is the subject of the forfeiture action," as contemplated by section 1355(d). Thus, it would appear that Congress intended to authorize the court in the district where the forfeiture action could be brought pursuant to section 1355(b) to issue a seizure warrant for the property, regardless of where the property was located. What Congress apparently overlooked, however, was a provision in Rule 41(a) that provides that a warrant may be issued only for property "within the district." The question that arises, therefore, is whether the explicit provisions of section 1355(d) override the geographical limitations of Rule 41(a), or whether the incorporation of Rule 41 by section 981(b) means that, in money laundering forfeiture cases, the Government is limited to executing seizure warrants in the district in which they are issued, notwithstanding the evident intent of the nationwide service of process provision.

No court has ruled on this question. To the contrary, the few courts that have addressed sections 1355(b) and (d) at all have apparently assumed that the issuance of out-of-district seizure warrants is authorized. For example, in *United States v. $633,021.67*, 842 F. Supp 528 (N.D. Ga 1993), a court in the Northern District of Georgia issued a seizure warrant that was used to seize property located in the Southern District of Iowa and the District of Nebraska. The court had no difficulty in finding that section 1355(d) authorized such nationwide service of process, and that that was the clear intent of Congress in enacting the provision (842 F. Supp. at 532), but there is no discussion in the case of the geographical limits set forth in Rule 41(a).

At least two courts, however, have addressed an analogous problem that arose because of a conflict between the expanded venue provisions in sections 981(h) and 881(j) and a provision in the Admiralty Rules that restricts service of an arrest warrant *in rem* to the district in which the warrant is issued. *See* Supplemental Rule E(3)(a).[2] Because of the territorial limitation of Rule E(3)(a), courts that interpreted sections 981(h) and 881(j) as implicitly authorizing nationwide service of process had to determine whether those statutes overrode the explicit provisions of the Rule.

In *United States v. Parcel I, Beginning at a Stake*, 731 F. Supp. 1348, 1352 (S.D. Ill. 1990), the claimant argued that service of an arrest warrant *in rem* was "automatically invalid" if the property was seized outside of the district in violation of Rule E(3)(a). The Government responded that notwithstanding the absence of a nationwide service of process provision in section 881(j), that statute displaced the Admiralty Rule and permitted the execution of an arrest warrant *in rem* outside of the district. That construction, the Government argued, was implied by the legislative history of the expanded venue statute and by "the inherent purpose" that the statute was meant to serve. 731 F. Supp. at 1351. The court agreed with the Government:

> "This court finds the [G]overnment's argument compelling. Since process is necessary to perfect statutory jurisdiction, the claimants' argument, if followed, would render

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> section 881(j) a nullity. A statutory construction, which would impute a useless act to Congress, must be viewed as unsound and rejected. Accordingly, this court finds that extraterritorial service of process is allowed, by implication, from the legislative history and purpose of section 881(j)."

731 F. Supp. at 1351-52 (citation omitted).[3]

The court rejected a similar argument for similar reasons in *United States v. Premises Known as Lots 50 & 51*, 681 F. Supp. 309, 313 (E.D.N.C. 1988). In this case, the court noted that when Congress enacted the expanded venue provision it did not make a parallel amendment to the statute incorporating the Admiralty Rules; nor, of course, did Congress enact an explicit nationwide service of process provision. But the court held that the failure of Congress to complete the drafting process "should not serve to completely frustrate the purpose of enacting subsection 881(j) or, in many cases, completely prevent its operation." *Id.* at 314. Accordingly, the court held that notwithstanding Rule E(3)(a), nationwide service of process was authorized.

The cases resolving the conflict between sections 981(h) and 881(j) and Rule E(3)(a) are instructive for two reasons. First, the analogy to the conflict between section 1355(d) and Rule 41(a) is plain. In both cases, the legislative history makes it clear that Congress intended to increase the number of districts in which a civil forfeiture action could be brought and to give the district courts the ability to exercise *in rem* jurisdiction over the property. Just as that purpose would have been frustrated by failing to interpret the older expanded venue statutes as overriding the geographical limitation provision of the incorporated Admiralty Rule, it would be frustrated by failing to so interpret the nationwide service of process provision in section 1355(d), notwithstanding the geographical limitation in Rule 41(a).

Second, if it was appropriate to interpret the expanded venue statutes as overriding the geographical limitations of Rule E(3)(a) in a case where the venue provision contains no explicit nationwide service of process provision, *a fortiori*, it is appropriate to so interpret section 1355, which contains such a provision—a provision that was clearly enacted to give district courts the power to exercise *in rem* jurisdiction in all cases covered by the new expanded venue authority. A contrary interpretation would render section 1355(d) a nullity in precisely the category of cases in which it was intended to apply.

Conclusion

For all of these reasons, I conclude that the district court in the district where the acts giving rise to the forfeiture took place is authorized to issue a seizure warrant for property located in other districts that is subject to forfeiture. But I add this cautionary note: No one should ever attempt to execute a seizure warrant in a civil forfeiture case in another district without first contacting the other district to advise the United States Attorney of what is contemplated. In part, this is a simple courtesy. The United States Attorney is the chief federal law enforcement officer in the district and, therefore, should be consulted before any law enforcement action takes place in that district. But there are practical consequences of failing to apprise the local authorities as well.

If property is seized in one district with a warrant issued in another district, it is likely that a party contesting the seizure will file a motion for the return of the seized property under Rule 41(e) in the district where the seizure took place, even though the prosecutor and the judge or magistrate who are familiar with the case are in the other district. It is counterproductive to have an Assistant United States Attorney totally unfamiliar with the case suddenly confronted with a Rule 41(e) motion for the return of property seized with a warrant issued somewhere else. Hence, the Asset Forfeiture and Money Laundering Section strongly advises anyone attempting service of an out-of-district seizure warrant to coordinate with the United States Attorney in the district where the property will be seized.

Endnotes

[1] The Annunzio-Wylie Act was enacted as Title XV of the Housing and Community Development Act of 1992, Pub. L. 102-550, 106 Stat. 4062.

[2] The rule provides as follows: "Process *in rem* and of maritime attachment and garnishment shall be served only within the district."

[3] In a footnote, the court added, "It is clear from the legislative history of § 881 that Congress intended to expand the [G]overnment's ability to combat far-flung drug conspiracies, such as the one in which [Claimant] was a participant."

Treasury Trends

By Charles Ott, Special Projects Advisor, Executive Office for Asset Forfeiture, Department of the Treasury

Supporting the National Performance Review Initiative

The Department of the Treasury's Executive Office for Asset Forfeiture, along with its national seized property management contractor, EG&G Dynatrend, have teamed up to lend support to an initiative growing out of Vice President Al Gore's National Performance Review.

On December 16, 1997, several real properties forfeited by Department of Justice law enforcement agencies were sold at auctions in the Chicago area by the Treasury contractor. The added costs of these sales are billed to the General Services Administration as part of its effort to help market and sell Department of Justice properties forfeited for more than one year under the National Performance Review's government-owned real estate or GORE initiative.

Ancient Gold Platter Seized by the U.S. Customs Service

By the fifth century B.C., having defeated their Etruscan and Carthaginian rivals, the Greeks had become the leading colonial power in the Western Mediterranean. It was sometime during this period of relative stability, that a skilled artisan on a Greek colony in Sicily hammered out a golden libation bowl, or phial, that was destined to take its place in the Department of the Treasury's inventory of seized and forfeited property almost two and a half millennia later.

In November 1997, a federal judge in White Plains, New York, awarded the bowl to the Government after finding that an art dealer, acting for the owner of the bowl, had made false statements on a U.S. Customs form that identified Switzerland, rather than Italy, as the country of origin of the object. Italy has stringent laws protecting its antiquities and a truthful identification of the country of origin would have alerted the U.S. Customs Service to the violation of these laws. The dealer, after purchasing the bowl in Lugano, took pains to recross the border into Switzerland and return to New York from Zurich. After paying $1 million for the bowl, the owner then displayed it in his Manhattan apartment from 1992 to 1995 when U.S. Customs agents serving a warrant seized it.

The bowl had been authenticated by New York's Metropolitan Museum of Art, which noted that it was very similar to a phial on display in its own collection. The forfeited object of art, of shallow depth and about twelve inches in diameter, will be returned to the government of Italy.

Road to Reinvigoration

IRS-CID Gulf Coast District Sponsors Asset Forfeiture Reinvigoration Program

By Katherine L. Corley, Assistant United States Attorney, U.S. Attorney's Office, Northern District of Alabama

The Gulf Coast District (Alabama, Louisiana, and Mississippi) of the Criminal Investigations Division, Internal Revenue Service, sponsored an asset forfeiture reinvigoration seminar at the Gulf State Park Resort and Conference Center in Gulf Shores, Alabama, on November 4-6, 1997. Special Agents and Assistant United States Attorneys for all judicial districts in these three states were invited to attend. The Asset Forfeiture Unit of the U.S. Attorney's Office for the Northern District of Alabama helped plan and conduct the seminar. The goal of the conference was to inform and educate the agents of the benefits of asset forfeiture as well as to educate them regarding the procedures and law of asset forfeiture and financial investigations.

The three-day course focused on civil and criminal asset forfeiture, investigative techniques, money laundering, policies regarding pleas and settlements of forfeiture cases, piercing the corporate veil, and pre-seizure planning. EG&G Dynatrend sent representatives to discuss pre-seizure planning issues, and property management and disposal. Assistant United States Attorney Katherine Corley for the Northern District of Alabama spoke about civil and criminal forfeiture and discussed piercing the corporate veil. Assistant United States Attorney John Harmon for the Middle District of Alabama lectured on issues and policies governing pleas and settlements in civil and criminal forfeiture cases. Assistant United States Attorney James Warren for the Northern District of Mississippi discussed legal basis for forfeiture. Assistant United States Attorney Larry Benson for the Eastern District of Louisiana discussed Colombian money laundering and money remitters. Special Agent Jeffrey Goins lectured on structuring a financial investigation, sources of information, and investigative techniques. Special agent Goins also addressed asset seizure procedures for specific assets. Assistant Director Kenneth Massey, Executive Office For Asset Forfeiture, Department of the Treasury, was present to discuss the current status of the Department of Treasury's Asset Forfeiture Program. Director Tyrone Barney, Criminal Investigations Division, Internal Revenue Service, discussed the current status of his division.

The seminar was well attended by 84 special agents, and ten Assistant United States Attorneys. Less than one-half of the agents attending the seminar had been involved in an asset forfeiture case. Dan Whitten, Chief, Criminal Investigations Division, Internal Revenue Service, reported that the agents found the seminar useful and interesting. An increase in the use of asset forfeiture in the Gulf Coast District is anticipated.

District of Hawaii Seizes $2 Million Property

By Rachel Moriyama, Assistant United States Attorney, U.S. Attorney's Office, District of Hawaii

The District of Hawaii has created a joint asset forfeiture task force to target problem real property cases. This task force grew out of a successful proactive investigation and forfeiture of a $2 million property in downtown Honolulu. We conducted asset forfeiture training for our federal agencies

See ***Road****, page 8*

Road to Reinvigoration

***Road**, from page 7*

and the local police department, including customized classes for vice and community policing.

Our district also is in the process of establishing our first Weed and Seed site. We anticipate forfeiture to be a large component of the law enforcement effort. We will train the two police districts that encompass our Weed and Seed site, including patrol, crime reduction unit, and community policing unit.

In March 1998, we will be presenting a forfeiture training session to a large community group that organizes neighborhood watches. This session will focus on how citizens can assist law enforcement officials in identifying problem properties and in collecting evidence to establish probable cause or rebut defenses.

District of Connecticut Recognizes Law Enforcement Agencies at Training Seminar

By Carl Schuman, Assistant United States Attorney, U.S. Attorney's Office, District of Connecticut

On October 15, 1997, the U.S. Attorney's Office for the District of Connecticut held a half-day asset forfeiture meeting at its office in New Haven. Members of the U.S. Attorney's Office, attorneys from the Chief State's Attorney's Office, and representatives of federal, state, and local law enforcement agencies were present at the meeting. John Durham, United States Attorney, and John Hughes, Chief, Civil Division, provided opening remarks. Assistant United States Attorney Carl Schuman, who was the asset forfeiture coordinator, spoke about trends in asset forfeiture, reviewed proposed legislative and rules changes, and compared the existing features of administrative, civil, and criminal forfeiture.

Equitable sharing awards were then presented to state and local law enforcement agencies in two significant cases:

- The Wilton Police Department in Connecticut received $100,000 in equitable sharing as a result of their work in *United States v. 57 Old Farm Road, Wilton. Old Farm Road* was a civil forfeiture case under 21 U.S.C. § 881(a)(7), in which the claimants consented to the forfeiture on the eve of trial.
- In the second case, *United States v. Tri-Auto et al.*, the Connecticut State Police Statewide Narcotics Task Force received approximately $100,000 and the Police Department in Milford, Connecticut, received approximately $25,000. *Tri-Auto* was a criminal case, in which automobile dealers were selling cars to drug dealers for cash. The dealers would disguise the transactions by registering the cars in third-party names and writing fake checks from auto credit companies. After a jury convicted the defendants, the court imposed a $465,000 forfeiture order. The money was also shared by the Federal Bureau of Investigation and the Internal Revenue Service.

District of Idaho Repatriates $1.8 Million in Drug Proceeds from Switzerland

By Anthony Hall, Assistant United States Attorney, U.S Attorney's Office, District of Idaho

Recently, the District of Idaho successfully repatriated over $1.8 million in drug proceeds from Switzerland. The accounts had been frozen pursuant to a MLAT request in connection with the drug trafficking and money laundering prosecution of Raymond A. Whelan, who is now serving time in a federal prison. The accounts had been opened in the names of various Shell corporations. Fifty percent of the net proceeds will be shared back with the Swiss government. The U.S. Attorney's Office for the District of Idaho was assisted by Colette Ford, Office of International Affairs, and Linda Samuel, Asset Forfeiture and Money Laundering Section.

Several hundred thousand dollars in other assets will also be

forfeited, including real estate in Florida and business assets in California. The Criminal Investigative Division, Internal Revenue Service, is the lead agency working on the investigation and prosecution.

Eastern District of Tennessee Hosted Five Conferences in the Fall of 1997

By David C. Jennings, Assistant United States Attorney, U.S. Attorney's Office, Eastern District of Tennessee

United States Attorney Carl Kirkpatrick for the Eastern District of Tennessee hosted a series of five LECC/Asset Forfeiture Training conferences around the district during the fall of 1997.

The morning session of each conference was devoted to intelligence sharing among federal, state, and local law enforcement agencies. During the afternoon session, the members of the Asset Forfeiture Unit, United States Attorney's Office, presented information about asset forfeiture investigation, federal civil and criminal forfeiture procedures, and equitable sharing. Attendees of the afternoon sessions included district attorneys general and state and local law enforcement officers.

United States Attorney Kirkpatrick wanted to achieve two goals when he chose this conference format: to advance an existing spirit of cooperation and coordination among federal, state, and local law enforcement agencies within the district; and to demonstrate how the district's asset forfeiture and equitable sharing programs work.

The conferences were held in five cities across the district. Among the approximately 300 attendees were state prosecutors, Tennessee Bureau of Investigation agents, highway patrol officers, and city police officers and deputy sheriffs.

We stressed the importance of making asset forfeiture investigation an integral part of a criminal investigation throughout its duration. We used actual cases to demonstrate effective forfeiture investigative techniques. The basic mechanics of federal civil and criminal forfeiture laws were explained, in addition to the procedures for referring adoptive forfeiture cases to our office.

Finally, we highlighted the district's equitable sharing program and our policy on sending forfeited dollars to state and local law enforcement. The district attorneys general were encouraged to involve their offices in cases involving forfeiture potential so that they, too, may participate in the equitable sharing program.

This column recognizes Assistant United States Attorneys and LECC coordinators for their successful and innovative programs, in which they alert prosecutors, agents, or law enforcement officers to the use of forfeiture as a law enforcement tool and train them in forfeiture law and financial investigations. We want to recognize your efforts to reinvigorate asset forfeiture and to inform others of what can be done in support of the Attorney General's goals. Send your stories to Beliue Gebeyehou via fax: (202) 616-1344 or DOJ email: CRM20(bgebeyeh).

A New AFBB site on Justice's Intranet is coming soon

The Asset Forfeiture and Money Laundering Section is moving forward with plans to create a new Asset Forfeiture Bulletin Board (AFBB) site on the Department of Justice's Intranet by March.

Send us the following documents to post to the AFBB:

- Sample jury instructions for criminal forfeiture pursuant to 18 U.S.C. § 982(a)(2)(A) (proceeds of bank fraud) and other statutory bases
- Sample jury instructions for civil forfeiture
- Sample complaints on various civil forfeiture issues
- Sample motions for summary judgment on various civil forfeiture issues
- Appellate briefs on civil forfeiture issues
- Indictments containing forfeiture counts

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The Significance of a Drug Dog's Alert in a Forfeiture Case

By Robert Knabe, Special Assistant United States Attorney, U.S. Attorney's Office, Southern District of Florida

Over the past several years, the media have given attention to the theory that the great majority of circulated U.S. currency is contaminated with trace amounts of cocaine. Some defense attorneys have used this "contaminated money theory" to argue that so much currency is innocently contaminated with cocaine that a drug dog's alert has no relevance in connecting currency to illegal drug activity. This argument has gained widespread acceptance by the public and in several courts.[1]

The purpose of this article is to support the proposition that a drug dog's alert to currency is highly relevant and probative in a forfeiture case. Moreover, this article discusses the latest scientific research which supports the probative value of the drug dog's alert notwithstanding the "contaminated money theory."

"Contaminated Money Theory": No Valid Statistical Basis

As a threshold matter, we must observe that there is very little scientific evidence to support the "contaminated money theory." The studies on which the courts have relied involved small samples and flawed techniques.

In one of the more publicized experiments, for example, a random sampling of only 135 bills was used.[2] The tests done to analyze those 135 bills used an instrument called a gas chromatograph-mass spectrometer, which was certainly accurate as to those specific bills. But such a small sample cannot be used as the basis for broad statistical conclusions concerning the percentage of contamination on all circulated U.S. currency (whether nationally or in a specific geographic area) or the range or average amount of contamination on any given bill. Stefan Rose, M.D., a consulting toxicologist in Miami,[3] has stated that, in order to make a statistically valid conclusion as to the extent of contamination in any given geographic area, a much broader base from a chosen representative sample would first be required. Otherwise, no statistically valid conclusions could be reached.

Moreover, none of the articles published on the contamination theory even discuss statistical methodology, except to say that bills were chosen at random. As noted by Dr. Rose, true statistical random sampling does not occur "at random" in the colloquial sense of the word. Statistical random sampling employs various scientific methods, in order to ensure that the chosen sample is representative of the population under study and not simply the result of "chaotic" sampling. Given the lack of scientific sampling in these studies, it is unlikely that they could pass the standards for admissibility of scientific evidence in either federal or state courts.[4]

Canine Reports

Even if the "contaminated money theory" were *scientifically* valid, that would only establish that a large percentage of U.S. currency is contaminated with a quantity of a controlled substance that can be detected with laboratory instruments. But is it fair to infer from such evidence that a drug dog's alert is useless as a law enforcement tool? Does a drug dog's nose have the same sensitivity as a gas chromatograph? Or does the dog alert only to large quantities of cocaine or other controlled substances? Does the dog alert to cocaine at all? Could it be alerting to some other substance associated with the cocaine manufacturing process that may or may not be present on a large percentage of the currency in circulation?

The law requires a logical connection between a scientifically established fact and a legal conclusion. The conclusion being drawn from the "contaminated money theory" is that a drug dog will alert any time it is in the presence of a large amount of money. But that conclusion is subject to question because it clearly contradicts common experience.

If virtually all currency in circulation were contaminated with

microscopic quantities of cocaine, and if drug dogs alerted every time they were in the presence of such quantities of cocaine, the dogs would be alerting virtually all of the time. But that is not the case. As all experienced drug enforcement professionals know, drug dogs simply do not alert every time they are in the presence of a large quantity of currency. Law enforcement officers put drug dogs in an alert mode everyday in airports, bus terminals, train depots, parking lots, shopping malls, and post offices, but never report that their drug dogs alert to the millions of innocent people carrying cash in varying amounts at any of these places.

Records kept by the Metro-Dade Police Department in Miami, Florida, also provide supporting data. Since 1989, the Metro-Dade Police Department has kept a record of the alerts and non-alerts by its drug dogs to large amounts of circulated U.S. currency.[5] There are now approximately 70 reports of non-alerts to currency ranging from several hundred dollars to over fifty thousand dollars. Therefore, when a drug dog does alert to a batch of circulated currency, it is reasonable to believe that the currency in that batch had a more significant exposure to narcotics than currency in general circulation.

New Scientific Study Proves Theory Wrong

So, how is it possible—assuming it is true—for drug dogs to alert selectively to only some of the contaminated money if virtually all currency in circulation is contaminated with cocaine? The results of a new scientific study provide the answer. The drug dog does not alert to cocaine at all, but to a volatile chemical by-product that remains on the currency only for a short period of time.

Dr. Kenneth Furton and his colleagues[6] conducted experiments over a two-year period with 13 Metro-Dade Police Department drug dogs of various breeds and ages in Florida. The experiments determined that drug dogs alerting to batches of circulated U.S. currency are actually alerting to the odor of methyl benzoate, a highly volatile decomposition by-product of processed cocaine. According to Dr. Furton's article, methyl benzoate evaporates quickly from the surface of bills, while pure cocaine remains for much longer periods and is easily transferred from bill to bill. Consequently, bills innocently contaminated through general circulation will not cause an alert by a drug dog, since any methyl benzoate dissipates when the bills are handled or exposed to air through routine circulation. However, bills with a recent contact to a significant amount of cocaine would still emit the odor of methyl benzoate, therefore causing a properly-trained drug dog to alert.

Notably, the same contact that innocently spreads trace amounts of cocaine from one bill to another—and provides the basis for the "contaminated money theory"—is, in fact, the exact activity which dissipates the methyl benzoate that causes a drug dog to alert.

Conclusion

The new scientific research has verified that an alert by a properly-trained drug dog is probative and relevant in determining that currency has been in recent direct contact or close proximity to a significant quantity of illegal drugs and has not been innocently contaminated with cocaine residue.

Government attorneys should no longer accept any evidence or testimony supporting the "contaminated money theory," but should rely on qualified testimony and scientific research in cases where a drug dog alerts to circulated U.S. currency.

Drug dogs are alerting to the odor of methyl benzoate.

Endnotes

[1] *See United States v. $49,576.00 in U.S. Currency*, 116 F.3d 425 (9th Cir. 1997) (seizure of cash at airport lacked probable cause despite dog sniff, evasive answers, fake identification, courier profile, and prior drug arrest); *United States v. $30,060*, 39 F.3d 1039 (9th Cir. 1994) (dog sniff not probative where 75 percent of currency in the community is contaminated); *United States v. $13,570.00 in U.S. Currency*, 1997 WL 722947 (E.D. La. Nov. 18, 1997) (same); *United States v. $14,876.00 in U.S. Currency*, 1997 WL 722942 (E.D. La. Nov. 18, 1997) (same); *Jones v. United States Drug Enforcement Administration*, 819 F. Supp. 698, 720 (M.D. Tenn. 1993).

See ***Alert****, page 12*

Drug Dog's Alert in a Forfeiture Case

Alert, from page 11

[2] "Dirty Money," *United States Banker*, (October 1989).

[3] Dr. Rose, an expert in the field of toxicology, along with Dr. Kenneth G. Furton, Director, Criminalistics Program, Department of Chemistry, Florida International University, has conducted extensive studies on the "contaminated money theory" and its relevance to drug dog detection.

[4] In most state courts, including Florida's, a party seeking to introduce scientific evidence must demonstrate that the underlying methodology is generally accepted in the relevant scientific community. *See Strokes v. States*, 548 So.2d 188 (Fla. 1989) (adopting the test espoused in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)); *Flanagan v. States*, 625 So.2d 287 (Fla. 1993) (reaffirming Stokes even after the U.S. Supreme Court's decision in *Daubert*). In federal courts, the test for admission of scientific evidence is a somewhat more relaxed relevance/reliability test. The test requires a demonstration that the underlying methodology is scientifically valid and can properly be applied to the facts at issue. *See Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). Dr. Rose and Dr. Furton have found that tests supporting the "contaminated money theory" do not involve valid statistical planning concerning the scope or range of contamination. They note that the published articles on these tests were not written as scientific peer review articles.

[5] Mr. Thomas Guilfoyle, Supervisor, Forfeiture Section, Metro-Dade Police Department, is the custodian of those reports and has testified as an expert on the reports and their relationship to circumstantial forfeiture cases concerning currency and drug dog alerts.

[6] K. G. Furton, Y. -L. Hsu, N. Alvarez, and P. Lagos, "Novel Sample Preparation Methods and Field Testing Procedures Used to Determine the Chemical Basis of Cocaine Detection by Canines," *Forensic Evidence and Crime Science Investigation*, Proc. SPIE 2941, 56-62 [1997].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, PLAINTIFF,	DEFENDANT.
v.	CIV - UNGARO-BENAGES
FIVE HUNDRED THOUSAND DOLLARS ($500,000) IN U.S. CURRENCY,	Case No. 95-1322
	Magistrate Judge Garber
	AFFIDAVIT OF KENNETH FURTON, PH.D.

I, Kenneth Furton, Ph.D., HEREBY DECLARE under penalty of perjury as provided by 28 U.S.C. § 1746, that the following information contained in this Affidavit is a true and correct recital of my expert opinion in this case based upon a reasonable degree of scientific certainty.

1. It is my expert opinion that a positive alert to U.S. currency by a trained narcotics detection canine indicates that the currency had recently, or just before packaging, been in close or actual proximity to a significant amount of narcotics, and is not the result of any alleged innocent environmental contamination of circulated U.S. currency by microscopic traces of cocaine.

2. My expert opinion is not affected by the alleged theory that the majority of circulated U.S. currency is innocently contaminated with microscopic amounts of cocaine, as my research has shown to a reasonable degree of scientific certainty that narcotics detection dogs alert to the odor of methyl benzoate on currency and not to cocaine. Methyl benzoate is a highly volatile substance associated with the manufacture of street cocaine, and dissipates quickly when handled or exposed to air, while pure cocaine hydrochloride has almost no gaseous odor and is transferred rather easily by physical contact.

3. I have conducted experiments with Metro-Dade Police Department narcotics detections dogs, including "King," the narcotics detection dog who alerted positively to the odor of narcotics emanating from $500,000 seized in this case, and it is my expert opinion that "King" acted at all times consistent with his training and in conformity with my opinion as to cocaine and methyl benzoate.

4. I am an expert in the field of Analytical Chemis-

try and Forensic Science. I extensively covered my academic background during my deposition in this case, a copy of which was supplied to Claimant's attorney. Moreover, a copy of my Curriculum Vitae, including a list of publications, has already been provided to Claimant's attorney.

5. My research included a study of Metro-Dade Police detection canines and their abilities to detect the odor of cocaine. It is my conclusion that narcotics detection canines actually alert to the odor of methyl benzoate, and not to cocaine hydrochloride (pure cocaine). Much of my study is detailed in the thesis of Yi-cheng Hong, a copy of which has already been provided to Claimant's attorney.

6. I am also very familiar with fragrance and perfume analysis. As a result, it is my expert opinion that the methyl benzoate used in some perfumes is so minute as compared to the hundreds of gaseous substances contained in perfume that there is no way that a narcotics detection dog trained to alert to cocaine would alert to perfume. This theory is supported further by the fact that dogs do not alert to persons in public places, whether they are wearing perfume or carrying innocently contaminated currency. If either theory were true, narcotics canines would alert non-stop when placed in an alert mode in such pubic places as airports, bus stops, and train stations.

7. I am also aware of the numerous non-alerts by Metro-Dade narcotics canines to large amounts of circulated U.S. currency, a fact which supports my theories and is inconsistent with the theory that all U.S. currency is to contaminated with so much cocaine that narcotics detection canines with always alert to money.

/signed/ 4/18/96

Kenneth Furton, Ph.D. Date

State and Local Training Accomplishments

By Araceli Carrigan, Trial Attorney, AFMLS, Criminal Division, and Alice Dery, Assistant Chief, AFMLS, Criminal Division

With the distribution of the *State and Local Asset Forfeiture Curriculum* (hereinafter *Model Curriculum*) in December 1996, the Asset Forfeiture and Money Laundering Section and the State and Local Training Working Group focused on and implemented four major areas in FY 1998:

- presentation and demonstration of the *Model Curriculum* at national, state, and local law enforcement conferences;
- development and implementation of an asset forfeiture senior executive law enforcement course;
- development and implementation of an ethics training initiative; and
- development of an asset forfeiture financial investigations curriculum.

During FY 1997, the Asset Forfeiture and Money Laundering Section presented and demonstrated the *Model Curriculum* at the national conferences of the National Sheriff's Association, the National District Attorneys Association, the International Association of Chiefs of Police, and the International Association of Women Police Officers. The Asset Forfeiture and Money Laundering Section also presented the *Model Curriculum* to the International Association of Directors for Law Enforcement Standards and Training in an effort to urge the training directors to incorporate and certify the *Model Curriculum* in police academies in every state. At these conferences, close to 500 police chiefs, sheriffs, district attorneys, and training directors were introduced to the *Model Curriculum*.

*See **Accomplishments**, page 14*

State and Local Training Accomplishments

Accomplishments, from page 13

In addition to the national organizations, the *Model Curriculum* was used in state and district-wide seminars in Arkansas, California, Georgia, Minnesota, Arizona, Oklahoma, Ohio, Florida, and Louisiana. Through the coordinated efforts of the LECC coordinators, the Drug Enforcement Administration's asset forfeiture group supervisors, the state prosecuting attorneys associations, and the state POST directors, these seminars have trained more than 1,000 law enforcement personnel in asset forfeiture since December 1996. The California District Attorneys Association, using the *Model Curriculum*, trained approximately 500 California prosecutors, support personnel, police officers, investigators, and commanders.

Since police chiefs, sheriffs, and district attorneys comprise a significant portion of our audience, the Asset Forfeiture and Money Laundering Section developed the Asset Forfeiture Senior Executive Law Enforcement Seminar using the following components taken from the *Model Curriculum*: Ethics, Introduction to Asset Forfeiture, Resource Allocation, and Equitable Sharing. Recognizing the limited time constraints of a law enforcement executive, this seminar focuses on managerial issues and concerns related to the proper management of an asset forfeiture unit in a law enforcement agency and has become a mainstay of the state and local forfeiture training program.

With the recent media focus on some state and local asset forfeiture programs, the *Model Curriculum*'s Ethics module became a cornerstone of state and local forfeiture training. Using negative press articles on asset forfeiture—including videotapes of television programs on asset forfeiture—the Ethics training brought real-life cases into the classroom. At every Ethics presentation, students apply the National Code of Professional Conduct for Asset Forfeiture to the forfeiture stories written about and televised in the national and local media. As part of this training initiative, the code has been produced as a laminated bookmark for distribution to law enforcement personnel. Already close to 2,000 law enforcement officers have attended Ethics classes, including 200 Louisiana police officers, who conduct drug interdiction on highway I-10.

The Ethics module became a cornerstone of state and local forfeiture training. . . . [It] brought real-life cases into the classroom.

An outgrowth of the *Model Curriculum* has been the formation of a working group to develop a model curriculum on asset forfeiture financial investigations. A working group of federal and state prosecutors and investigators has already developed a detailed outline of the seminar curriculum including: objectives, outlines, audience and instructor criteria, and case scenarios. This curriculum was recently piloted in a joint conference sponsored by the Asset Forfeiture and Money Laundering Section and the California District Attorneys Association with approximately 150 prosectors and investigators in attendance. It is expected that this curriculum, including lesson plans, audiovisuals, participant materials, and other training materials, will be ready for distribution during the summer of 1998.

This aggressive training initiative during FY 1997 has generated enthusiasm from state and local law officers and prosecutors to use forfeiture as an effective law enforcement tool. Questions regarding the state and local law enforcement asset forfeiture curriculum should be addressed to Alice Dery or Araceli Carrigan, Asset Forfeiture and Money Laundering Section, at (202) 514-1263. A limited quantity of the "Code of Professional Conduct for Asset Forfeiture" bookmarks may also be requested.

DEA Breaks Money Laundering Operation

By Special Agent Dennis M. Bolum, Fort Myers Resident Office, Drug Enforcement Administration

In May 1996, the Fort Myers Resident Office of the Drug Enforcement Administration initiated an investigation into the money laundering activities of Gustavo Ramirez-Hernandez. During this investigation, it was discovered that Ramirez had been involved in money laundering activities for the Cali Cartel during a substantial period of time. This investigation revealed that Ramirez frequently traveled to New York and New Jersey to receive large amounts of U.S. currency from the Cali organization. Ramirez then traveled back to Miami, Florida, and laundered this money into various accounts in the Miami, Florida, area. It was found that Ramirez utilized two businesses to launder his drug profits; they were identified as "Agencia de Viajes Hola Mundo, Ltd." and "Ramco Import and Export." Both of these businesses were operated out of Ramirez's Miami, Florida, and Colombia addresses. Moreover, Ramirez used 13 separate bank accounts at seven separate banks in Miami, Florida, to facilitate his money laundering scheme.

Through an analysis of Ramirez's bank records, Ramirez made 78 transfers totaling $3 million dollars over an eleven-month period. Ramirez was in partnership with his son, Juan Carlos Ramirez, and his wife, Margarta Ramirez. Ramirez acted as an illegal currency broker for legitimate companies in Colombia. These companies wanted to purchase legitimate merchandise in the United States. Ramirez gave them discounted rates on the peso to U.S. dollar exchange for these purchases. Ramirez made pickups of the drug traffickers profits in the United States. He then paid for the merchandise in the United States for these legitimate companies in U.S. dollars. The companies received their merchandise in Colombia and paid Ramirez's associates, who are drug traffickers in Colombia, back in pesos. Ramirez collected a 5 percent commission for completing each transaction. This money laundering scheme allowed the drug traffickers to get their drug profits back to Colombia in pesos, as well as to provide a service to legitimate Colombian businesses.

In July 1996, DEA Headquarters approved utilizing a DEA cooperating source to launder drug proceeds for Gustavo Ramirez-Hernandez. During the investigation approximately $682,530.00 was received by the cooperating source from Ramirez in the form of U.S. currency, money orders, cashier checks, and interbank transfers. This currency was then transferred under Ramirez-Hernandez directions to other bank accounts in the United States and abroad. This undercover operation revealed accounts in which Ramirez was making deposits as well as Ramirez's mode of operation. The case expanded when Ramirez approached a cooperating source and undercover agent to supply a vessel to make a pickup of 1,000 kilograms of cocaine in Colombia and transport it back to the United States. In November 1996, an undercover vessel operated by two DEA cooperating sources made the pickup of 1,118 kilograms of cocaine off the coast of Colombia and transported it back to the United States. On November 2, 1997, an undercover agent made a delivery of 510 kilograms of cocaine in Fort Myers, Florida, to Ramirez, who was arrested at that time.

Three search warrants were served for Ramirez's residences and safe-deposit box. Additionally, seven search and seizure warrants were served on Ramirez's bank accounts, which resulted in the seizure of approximately $170,000.00 in U.S. currency. A civil forfeiture has been filed against Ramirez's residence in Miami, Florida, which is valued at $150,000.00. Ramirez's vehicle was also seized. This investigation was coordinated with the U.S. Customs Service in Fort Myers, Florida; the Internal Revenue Service in Miami, Florida; and the Drug Enforcement Administration Task Force in Fort Myers, Florida.

Ramirez was charged with money laundering and importation of 1,000 kilograms of cocaine on June 17, 1997. Ramirez pled "guilty" to these charges in federal court in Fort Myers, Florida. On September 24, 1997, Ramirez was sentenced to 135 months imprisonment.

People and Places . . .

. . . Forfeiture Program Specialist Joins INS

The Office of Asset Forfeiture, Immigration and Naturalization Service, recently selected Kimberly Hoyt for the position of asset forfeiture program specialist.

Ms. Hoyt was selected for this position because of her talent for working with computer graphics. She designed the Office of Asset Forfeiture's logo plaque and other graphics used in training seminars conducted this fiscal year. In her new role, Ms. Hoyt will coordinate training and graphics and assist in the operational aspects of the Immigration and Naturalization Service's Asset Forfeiture Program.

. . . USPIS Welcomes Asset Forfeiture Management Analyst

Mary Selvi recently joined the U.S. Postal Inspection Service's Asset Forfeiture Group as a management analyst. She previously served as forfeiture specialist at the U.S. Postal Inspection Service's Baltimore office.

Ms. Selvi received the "Vice President's Award" from the Chief Postal Inspector for superior performance regarding her contributions in a two-year project to improve the agency's evidence handling procedures, including her work as an audio-graphics instructor to train all inspectors in the implementation of the new procedures.

Furthermore, Ms. Selvi serves as the national coordinator of a new tracking system designed to identify and account for high value evidence. Ms. Selvi has the responsibility of overseeing and managing forfeiture activity in 15 of the agency's largest field divisions.

. . . Treasury Welcomes New Forfeiture Analyst

The Department of the Treasury's Executive Office for Asset Forfeiture welcomed Dennis McKenzie to its ranks during the summer of 1997. Mr. McKenzie had worked in the Seizures and Penalties Division, U.S. Customs Service, Washington, D.C., where he most recently worked on the development of the Seized Asset Case Tracking System. It had been his responsibility to pull together all of the many user requirements for the asset tracking system and to ensure that they were included in the system design. He brought a substantial amount of firsthand knowledge to that task having previously served for nearly four years as the fines, penalties, and forfeiture officer, U.S. Customs Service, at Dulles International Airport.

In his new position, he will be working primarily on the seized property management issues confronting the Department of the Treasury's Asset Forfeiture Program.

Editor's Note

If would like to see your name in the "People and Places" section, send us your biography. We will publish biographies of new government attorneys, prosecutors, agents, and other professional and managerial staff working in the areas of federal asset forfeiture and financial investigations.

UPCOMING TRAINING CONFERENCES

FEDERAL FORFEITURE

- *Asset Forfeiture for Criminal Prosecutors*
  March 10-12, 1998
  Location TBA
- *Tenth Circuit Component*
  May 12-14, 1998
  Location TBA
- *Advanced Money Laundering and Asset Forfeiture*
  June 23-25, 1998
  Location TBA

FINANCIAL INVESTIGATIONS

- *Reinvigoration Seminar*
  March 19, 1998
  Washington, DC
- *Basic Financial Investigations*
  April 14-16, 1998
  Santa Fe, NM
- *Southwest Border*
  April 14-16, 1998
  Albuquerque, NM

For more information about federal forfeiture conferences, please contact Nancy Martindale, AFMLS, Criminal Division. For more information about financial investigations conferences, please contact Mary Ann DeToro, AFMLS, Criminal Division. Both can be reached at (202) 514-1263.